

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

CHURCH MUTUAL INSURANCE)
COMPANY,)

Plaintiff,)

vs.)

Case No.:05-4134-CVC SOW

THE BAPTIST HOME, a Missouri non-profit)
corporation,)
P.O. Box 87)
Ironton, Missouri 63650)

and)

THE MISSOURI BAPTIST UNIVERSITY,)
formerly known as THE MISSOURI)
BAPTIST COLLEGE, a Missouri non-profit)
corporation,)
One College Park Drive)
St. Louis, Missouri 63141)

and)

THE MISSOURI BAPTIST FOUNDATION,)
a Missouri non-profit corporation,)
400 E. High Street)
Jefferson City, Missouri 65101-3253)

and)

WINDERMERE BAPTIST CONFERENCE)
CENTER, a Missouri non-profit corporation,)
State Rd AA, PO Box 458)
Roach, Missouri 65787)

and)

WORD AND WAY, a Missouri non-profit)
corporation)
3236 Emerald Lane)
Jefferson City, Missouri 65109)

and)
)
 ROBERT CURTIS, LYN HEYING,)
 MITCHELL JACKSON, JAMES MOORE)
 and JAMES PLYMALE, as messengers from)
 affiliated churches and members of the)
 MISSOURI BAPTIST CONVENTION, an)
 unincorporated association,)
)
 Defendants.)

PLAINTIFF CHURCH MUTUAL INSURANCE COMPANY'S COMPLAINT FOR DECLARATORY JUDGMENT

COMES NOW plaintiff Church Mutual Insurance Company (“Church Mutual”), and for its Complaint for Declaratory Judgment, states as follows:

1. This is a declaratory judgment action to determine the rights and obligations of plaintiff Church Mutual Insurance Company, hereinafter, “Church Mutual,” under policies of insurance issued by plaintiff to certain of the defendants. This action is brought pursuant to 28 U.S.C. § 2201, and plaintiff seeks declaratory relief. This Court has jurisdiction pursuant to 28 U.S.C. § 1332.

THE PARTIES

2. Church Mutual is a mutual insurance company with its principal place of business in Merrill, Wisconsin.
3. The Baptist Home is a Missouri non-profit corporation located in Ironton, Missouri.
4. The Missouri Baptist University f/n/a Missouri Baptist College is a Missouri non-profit corporation located in St. Louis County, Missouri.
5. Defendant Missouri Baptist Foundation is a Missouri non-profit corporation that maintains its office and registered agent in Jefferson City, Missouri.

6. Defendant Windermere Baptist Conference Center is a Missouri non-profit corporation located in Roach, Missouri.
7. Defendant Word and Way is a Missouri non-profit corporation located in Jefferson City, Missouri.
8. Defendant Robert Curtis is an individual and purports to be a messenger of Ballwin Baptist Church in Ballwin, Missouri and of the Missouri Baptist Convention.
9. Defendant Lyn Heying is an individual and purports to be a messenger from New Oakland Baptist Church in Ralls County, Missouri and of the Missouri Baptist Convention.
10. Defendant Mitchell Jackson is an individual and purports to be a messenger from Miner Baptist Church in Sikeston, Missouri and of the Missouri Baptist Convention.
11. Defendant James Moore is an individual and purports to be a messenger from Concord Baptist Church of St. Louis, Missouri and of the Missouri Baptist Convention.
12. Defendant James Plymale is an individual and purports to be a messenger of First Baptist Church, Villa Ridge, Missouri and of the Missouri Baptist Convention.

JURISDICTION AND VENUE

13. The amount in controversy exceeds \$75,000, exclusive of interest and costs.
14. Venue in this judicial district is proper under 28 U.S. § 1391(b)(2), because the events giving rise to the claims for coverage occurred within this judicial district, and the underlying lawsuit is pending in the Circuit Court of Cole County, Missouri at Jefferson City.

ALLEGATIONS COMMON TO ALL COUNTS

15. Church Mutual issued a Commercial Multi-Peril Policy of Insurance, policy number 0075923-02-869327, and an Umbrella Liability Policy of Insurance, policy number 923-

81-969934, to Missouri Baptist Foundation on March 1, 2000, covering the policy period of March 1, 2000 to March 1, 2003.

16. Church Mutual issued a Commercial Multi-Peril Policy of Insurance, policy number 0178849-02-945911, and an Umbrella Liability Policy of Insurance, policy number 0178849-81-945914, to Windermere Baptist Conference Center on December 31, 2000, covering the policy period of December 31, 2000 to December 31, 2003.
17. Church Mutual issued a Commercial Multi-Peril Policy of Insurance, policy number 0185133-02-023254, and an Umbrella Liability Policy of Insurance, policy number 0185133-81-036084, to Word and Way on September 7, 2001, covering the policy period of September 7, 2001 to September 7, 2004.
18. On October 25, 2004, a lawsuit was filed in the Circuit Court of Cole County, Missouri, titled *Robert Curtis, Lyn Heying, Mitchell Jackson, James Moore, and James Plymale v. The Baptist Home, Missouri Baptist University, Missouri Baptist Foundatin, Windermere Baptist Conference Center, and Word and Way* and bearing cause number 04-CV-326376. A true and accurate copy of the Petition filed in the second Cole County lawsuit is attached hereto as Exhibit A.
19. The Cole County lawsuit is brought by five individuals who claim to be messengers of the Missouri Baptist Convention.
20. The Cole County lawsuit contains 5 counts, each of which seek a declaratory judgment. The five counts of the Cole County lawsuit arise from the actions of the corporate defendants in amending their respective articles of incorporation.

21. Defendants the Missouri Baptist Foundation, Windermere and Word and Way have demanded a defense for the claims against them in the Cole County lawsuit, and Church Mutual has denied their demands.
22. Defendant Missouri Baptist Home is not insured by Church Mutual Insurance Company, however, Missouri Baptist Home is named as a defendant in the Cole County lawsuit. Plaintiff has asked Missouri Baptist Home to be bound by the outcome of the instant declaratory judgment action, but Missouri Baptist Home has not agreed to be bound by any decision of this court in the event said defendant is not named as a party to this lawsuit.
23. Defendant Missouri Baptist University f/k/a Missouri Baptist College is not insured by Church Mutual Insurance Company, however, Missouri Baptist University is named as a defendant in the Cole County lawsuit. Plaintiff has asked Missouri Baptist University f/k/a Missouri Baptist College to be bound by the outcome of the instant declaratory judgment action, but Missouri Baptist University has not agreed to be bound by any decision of this court in the event said defendant is not named as a party of this lawsuit.

COUNT I
DECLARATORY JUDGMENT AGAINST THE MISSOURI BAPTIST FOUNDATION,
WINDERMERE BAPTIST CONFERENCE CENTER AND WORD AND WAY
(DUTY TO DEFEND)

24. Plaintiff re-alleges and re-incorporates Paragraphs 1-23 of its Second Amended Complaint for Declaratory Judgment as if fully set forth herein.
25. The Commercial Multi Peril Policies of Insurance issued by plaintiff to defendants the Missouri Baptist Foundation, Windermere and Word and Way contain identical Directors, Officers & Trustees & Employment Practices coverage parts, hereinafter referred to as "D & O coverage."

26. Page 1 of the D & O coverage form provides:

A. DIRECTORS, OFFICERS AND TRUSTEES LIABILITY COVERAGE

1. Insuring Agreement

- a. We will pay on your behalf those sums that any of your “Directors, Officers or Trustees” become legally obligated to pay for “loss” arising from any claim or claims because of injury arising out of a “wrongful act” to which this insurance applies.

27. In the same section of this insuring agreement, the policy further provides:

- b. We will have the right and duty to defend the insured against any “suit” seeking payment for “loss” and to pay for the “defense expense.” However, we will have no duty to defend the insured against any “suit” seeking payment for “loss” to which this insurance does not apply...

28. On page 10 of the D & O coverage form, “loss” is defined as “damages, judgments, settlements, and ‘defense expenses.’” “Loss” does not include fines, taxes, penalties, nonmonetary damages, or injunctive relief.

29. On page 11 of the D & O coverage form, “wrongful act,” with respect to the insured’s “directors, officers, and trustees” is defined as:

- a. Any actual or alleged:
 - 1) Error or misstatement,
 - 2) Misleading statement,
 - 3) Neglect or breach of duty, or
 - 4) Act or omission

in the discharge of their duties for the insured as a director, officer or trustee.

- b. Any other matter against your “directors, officers, or trustees” solely by reason of their being your “directors, officers, or trustees.”

30. None of the counts contained in the Cole County lawsuit asserts a loss or offense sufficient to trigger coverage under the policies of insurance issued by plaintiff to defendants the Missouri Baptist Foundation, Word and Way, or Windermere.
31. The Commercial Multi-Peril Policies of Insurance issued by plaintiff to defendants Windermere and Word and Way also contain identical Legal Defense coverage parts.
32. Page 1 of the Legal Defense coverage form provides:

A. LEGAL DEFENSE COVERAGE

1. Insuring Agreement

We will pay “defense costs,” incurred by the insured, that result from a “suit” to which this insurance applies. This insurance applies to these “defense costs” only if:

- a. The “suit” results from a “defensible incident” that takes place in the “coverage territory,”
- b. The “suit” results from a “defensible incident” that occurs during the policy period.

33. The Legal Defense coverage form also provides for exclusions:

2. Exclusions

This insurance does not apply to any “defense costs” incurred because of:

- (7) any class action “suit”...

34. On Page 3 of the Legal Defense coverage form, “defensible incident” is defined as “any acts, omissions or failures of the insured.”
35. The Legal Defense coverage does not apply to defense costs incurred because of injury arising from acts, errors, or omissions in providing or failing to provide any professional service.

36. None of the counts contained in the Cole County lawsuit asserts an offense which falls within the definition of “defensible incident” as defined in the Legal Defense coverage form.
37. The Legal Defense coverage is limited to \$5,000.00 per each defensible incident.
38. Before this Cole County lawsuit was filed, The Executive Board of the Missouri Baptist Convention and the Missouri Baptist Convention, an unincorporated association of churches, as a class, by and through representative members, First Baptist Church of Arnold, Missouri, First Baptist Church of Bethany, Missouri, First Baptist Church of Branson, Missouri, Concord Baptist Church of Jefferson City, Oakwood Baptist Church of Kansas City, Missouri, and Springhill Baptist Church of Springfield, Missouri filed a lawsuit for declaratory judgment, breach of contract and injunctive relief against Defendants The Baptist Home, Missouri Baptist College, Missouri Baptist Foundation, Windermere Baptist Conference Center, and Word and Way, as well as Matt Blunt, the former Missouri Secretary of State.
39. The claims made in the first Cole County lawsuit also arose from the actions of the corporate defendants in amending their respective articles of incorporation.
40. As the allegations in the first and the second Cole County lawsuit arise out of the same actions, this is a single defensible incident under the Legal Defense coverage.
41. The counts contained in the Cole County lawsuit contain no claims that would trigger a duty to defend under the Umbrella Liability Policies issued by plaintiff to defendants the Missouri Baptist Foundation, Windermere Baptist Conference Center and Word and Way.

WHEREFORE, Plaintiff Church Mutual Insurance Company prays that this Court

declare the rights and duties of the parties under insurance policies numbered 0075923-02-869327, 923-81-969934, 0178849-02-945911, 0178849-81-945914, 0185133-02-023254, and 0185133-81-036084, and to enter its judgment finding, adjudging, and declaring that plaintiff has no contractual duty to defend defendants Missouri Baptist Foundation, Windermere Baptist Conference Center and Word and Way against the claims filed in the Circuit Court of Cole County, Missouri bearing case number 04CV326376, and for such other and further relief as the Court may deem appropriate.

COUNT II
***DECLARATORY JUDGMENT AGAINST THE MISSOURI BAPTIST FOUNDATION,
WINDERMERE BAPTIST CONFERENCE CENTER AND WORD AND WAY
(DUTY TO INDEMNIFY)***

42. Plaintiff re-alleges and reincorporates Paragraphs 1 through 41 of its Second Amended Complaint for Declaratory Judgment, as if fully set forth herein.
43. None of the Counts contained in the Cole County lawsuit asserts an offense or a loss sufficient to trigger coverage under the Commercial Multi-Peril Policies of Insurance or the Umbrella Liability Policies issued by Church Mutual to Defendants Missouri Baptist Foundation, Windermere Baptist Conference Center, and Word and Way.

WHEREFORE, Plaintiff Church Mutual Insurance Company prays that this Court declare the rights and duties of the parties under insurance policies numbered 0075923-02-869327, 923-81-969934, 0178849-02-945911, 0178849-81-945914, 0185133-02-023254, and 0185133-81-036084, and to enter its judgment finding, adjudging, and declaring that the policies of insurance provide no coverage for and no contractual duty to indemnify defendants Missouri Baptist Foundation, Windermere Baptist Conference Center and Word and Way against the claims filed in the Circuit Court of Cole County, Missouri bearing Case Number 04CV326376, and for such other and further relief as the Court may deem appropriate.

/s/Priscilla F. Gunn

Priscilla F. Gunn #29729

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